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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,825	01/20/2004	James M. Tyson	T 1	8027

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EXAMINER

GARCIA, ERNESTO

ART UNIT	PAPER NUMBER
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3679

DATE MAILED: 05/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/759,825

Applicant(s)

TYSON, JAMES M.

Examiner

Ernesto Garcia

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 17-20 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8-16 is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4/28/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

PO

## DETAILED ACTION

### *Restriction*

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-16, drawn to integral resilient plug and a fence, classified in class 256, subclass 19.
- II. Claims 17-20, drawn to a method of preventing flying insects from entering opening in interconnected fence components, classified in class 256, subclass 1.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the process as claimed can be used with a plug having a cylindrical body.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

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During a telephone conversation with Mr. Charles J. Kaplan on April 19, 2005 a provisional election was made with oral traverse to prosecute the invention of Group I, claims 1-16. Applicant in replying to this Office action must make affirmation of this election. Claims 17-18 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Specification***

The disclosure is objected to because of the following informalities:

on page 5, in line 5 of the second paragraph - reference numeral 25 has an inconsistent name than that of line 2. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Stringfield, 2,737,205 (see marked-up attachment).

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Regarding claim 1, Stringfield discloses, in Figure 1 and 4, an integral resilient plug comprising a main body portion **13**, shoulders **15**, and an end cap **12**. The main body portion **13** has a longitudinal axis **A2** and sides **14** having each an equal length **A4**, an width and an thickness **A6** (col. 5, lines 28-33 states that instead of circular, the plug can be made square). The sides **14** are joined to each other at right angles. The shoulders **15** are of uniform thickness **A9** protruding from the main body portion **13**. The shoulders **15** are spaced from each other along the longitudinal axis **A2**. Each of the shoulders **15** have a segment **A10** integral with one of the sides **14** of the main body portion **13**. Each segment **A10** has a continuous upper flat surface **A11** and a continuous lower flat surface **A12**. The upper flat surface **A11** and the lower flat surface **A12** extend perpendicularly from the sides **14** of the main body portion **13** in parallel planes **A13** that are perpendicular to the longitudinal axis **A2**. The end cap **12** has a flat inner surface **A15** integral with the main body portion **13** that closes one end **A16** of the main body portion **13**. Applicant should not that the plug is able to move in a direction perpendicular to the longitudinal axis and parallel to the planes of the flat surfaces of the segments into engagement with one fence component.

Regarding claim 2, the shoulders **15** are spaced from each other at substantially equal distances along the longitudinal axis **A2** of the main body portion **13**.

Regarding claim 3, each segment **A10** of the shoulders **15** are joined to each other at a right angle at each of their ends so that each shoulder continuously circumscribes the main body portion **13**.

Regarding claim 4, the upper flat surface **A11** and the lower flat surface **A12** have outer edges **A17** that terminate at equal (the same) distances from the sides **14** of the main body portion **13**.

Regarding claim 5, the shoulders **15** are spaced from each other at substantially equal distances along the longitudinal axis **A2** of the main body portion **13**. Each segment **A10** of the shoulders **15** are joined to each other at a right angle at each of their ends so that each shoulder continuously circumscribes the main body portion **13**. The upper flat surface **A11** and the lower flat surface **A12** have outer edges **A17** that terminate at equal (the same) distances from the sides **14** of the main body portion **13**.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over British patent, GB-1,551,855 (see marked-up attachment), in view of Sanderson et al., 5,287,892.

Regarding claim 1, British patent discloses, in Figure 1 and 2, an integral resilient plug comprising a main body portion **16**, shoulders **21-22**, and an end cap **17**. The main body portion **16** has a longitudinal axis **A2** and sides **12-15** having each an equal length, an width and an thickness **A6**. The sides **12-15** are joined to each other at right angles. The shoulders **21-22** are of uniform thickness **A9** protruding from the main body portion **16**. The shoulders **21-22** are spaced from each other along the longitudinal axis **A2**. Each of the shoulders **21-22** have a segment **A10** integral with one of the sides **12-15** of the main body portion **16**. Each segment **A10** has a continuous upper flat surface **24** and a continuous lower flat surface **25**. The end cap **17** has a flat inner surface **A15** integral with the main body portion **16** that closes one end **A16** of the main body portion **16**. Applicant should not that the plug is able to move in a direction perpendicular to the longitudinal axis and parallel to the planes of the flat surfaces of the segments into engagement with one fence component. However, the upper flat surface **24** and the lower flat surface **25** of the segment do not extend perpendicularly from the sides **12-15** of the main body portion **16** in parallel planes that are perpendicular to the longitudinal axis **A2**. Sanderson et al. teach, in Figure 8, An upper flat surface and a lower flat surface of a segment **51A-51C** extending perpendicularly from sides of a main body portion **4** in parallel planes that are

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perpendicular to a longitudinal axis of the main body portion **4** as an alternative design consideration of shoulders. Therefore, as taught by Sanderson et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to design the upper flat surface and the lower flat surface of each of the segments to extend perpendicularly from the side of the main body portion in parallel planes that are perpendicular to the longitudinal axis of the main body portion of the British patent as an alternative design consideration of the shoulders.

Regarding claim 6, the main body portion **16** is hollow with one end **A16** closed by the end cap **17** and an opposite end **A18** is open to the atmosphere. The end cap **17** has outer peripheral edges **A19** that extend past the main body portion **16** beyond a distance that outer edges **A20** of the upper flat surface **24** and the lower flat surface **25** protrude beyond the sides **12-15** of the main body portion **16**. The flat inner surface **A15** of the end cap **17** is parallel to the planes of the upper flat surface **24** and the lower flat surface **25**.

Claims 1 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zopfi, 3,578,027 (see marked-up attachment), in view of British patent, GB-1,551,855 (see marked-up attachment and Sanderson et al., 5,287,892).

Regarding claim 1, Zopfi discloses, in Figures 3 and 4, an integral resilient plug comprising a main body portion **12**, shoulders **20,21**, and an end cap **14**. The main



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body portion **12** has a longitudinal axis. A side of the main body portion has an equal length and width. The shoulders **20,21** are of uniform thickness protruding from the main body portion **12**. The shoulders **20,21** are spaced from each other along the longitudinal axis **A2**. Each of the shoulders **20,21** have a segment integral with a side of the main body portion **12**. Each segment has a continuous upper surface **20** and a continuous lower surface (unreferenced).

However, the main body portion is not square or hollow for the body portion to have sides having each equal length, width and thickness; nor the sides joined to each other at right angles; nor the upper surface or the lower surface being flat extending perpendicularly from the sides of the main body portion in parallel planes that are perpendicular to the longitudinal axis; nor the end cap **14** has a flat inner surface integral with the main body portion **12** that closes one end of the main body portion **12**.

The British patent teaches, in Figure 1-3, a main body portion being square and hollow such that the body portion has sides having each equal length, width, and thickness; the sides joined to each other at right angles; and, an end cap having a flat inner surface integral with the main body portion that closes one end of the main body portion. The British patent teaches these features as an alternative design for a plug. Therefore, as taught by the British patent, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the main body portion having sides having each equal length, width, and thickness; make the sides joined to each

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other at right angles; and, make the end cap have a flat inner surface integral with the main body portion closing one end of the main body portion as an alternative design from a round plug to a square plug.

Sanderson et al. teach, in Figure 8, an upper flat surface and a lower flat surface of a segment **51A-51C** extending perpendicularly from sides of a main body portion **4** in parallel planes that are perpendicular to a longitudinal axis of the main body portion **4** as an alternative design consideration of shoulders. Therefore, as taught by Sanderson et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to design the upper flat surface and the lower flat surface of each of the segments to extend perpendicularly from the side of the main body portion in parallel planes that are perpendicular to the longitudinal axis of the main body portion of the British patent as an alternative design consideration of the shoulders.

Applicant should note that the plug of Zopfi, as modified, is able to move in a direction perpendicular to the longitudinal axis and parallel to planes of the flat surfaces of the segments into engagement with one fence component.

Regarding claim 7, as modified above, the main body portion **12** is hollow with one end closed by the end cap and an opposite end is open to the atmosphere. The shoulders **20,21** are spaced from each other at substantially equal distances along the longitudinal axis **A2**. The upper flat surface and the lower flat surface have flat outer

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edges (see Figure 6 in Zopfi or Fig. 3 of the British patent) that terminate at the same distance from the sides of the main body portion **12**. The segments of the shoulders **20,21** are joined to each other at a right angle at each of their ends so that each of the shoulders **20,21** continuously circumscribes the main body portion **12**. The end cap **14** has outer peripheral edges that extend past the main body portion **12** beyond a distance that outer edges of the upper flat surface and the lower flat surface protrude beyond the sides of the main body portion **12**. The flat inner surface **A15** of the end cap **14** is parallel to the planes of the upper flat surface and the lower flat surface.

***Allowable Subject Matter***

Claims 8-16 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

regarding claim 8, the prior art of record does not disclose or suggest a fence comprising an integral resilient plug comprising an upper flat surface, of a segment of shoulders protruding from a main body portion having four sides of equal length, equal width and equal thickness, engaging a rib inside a rail; Forbis et al. teaches a fence with a plug; however, the main body portion has two sides of equal length, equal width and equal thickness. There is no motivation to add two more sides.

regarding claims 9-16, these claims depend from claim 8.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernesto Garcia whose telephone number is 571-272-7083. The examiner can normally be reached from 9:30-5:30. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 571-272- 7087. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*E.G.*

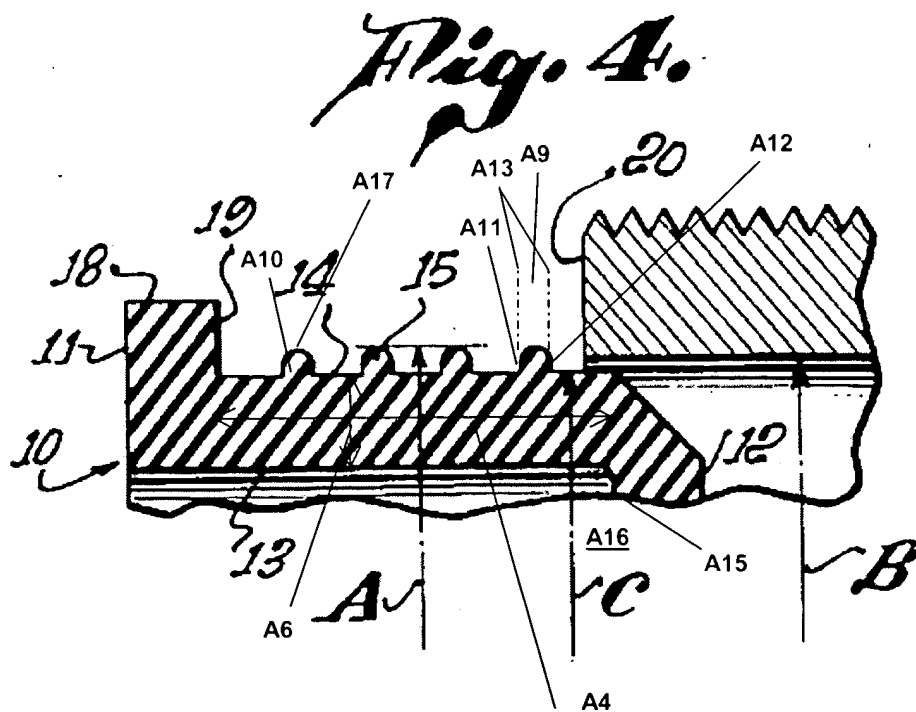
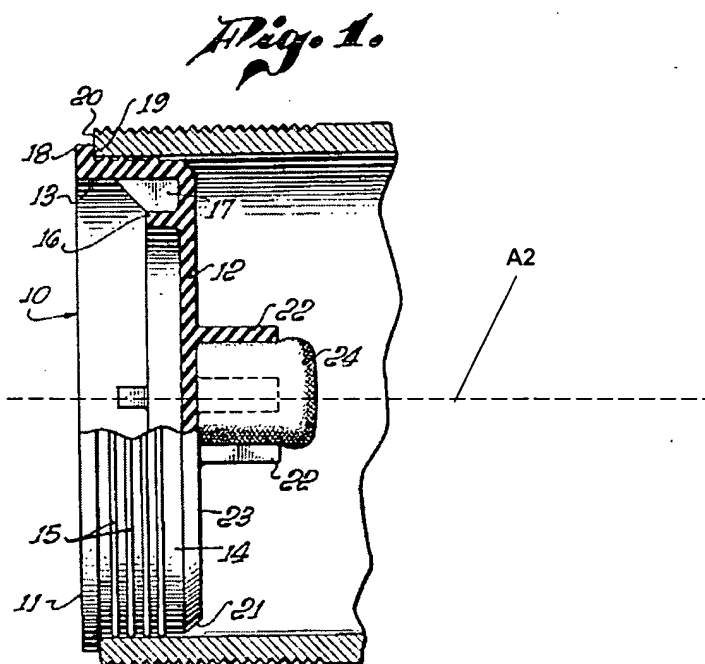
*Daniel P Stodola*

E.G.

April 28, 2005

Attachments: one marked-up page of Stringfield, 2,737,205  
one marked-up page of British Patent, GB-1,551,855

DANIEL P. STODOLA  
SUPERVISORY PATENT EXAMINER  
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GB-1551855

